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November 24, 2020

*Via ECF*

Honorable George B. Daniels  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1310  
New York, NY 10007

Re: CVI Investments, Inc. v. Mariano, 19-cv-2960  
Hudson Bay Master Fund v. Patriot and Mariano, 16-cv-2767

Dear Judge Daniels:

My firm represents plaintiff CVI Investments, Inc. ("CVII") in the above-referenced action. We write on behalf of all remaining parties to both actions identified above. These cases currently are scheduled for a status conference before Your Honor on December 2, 2020. The parties respectfully request that the status conference be adjourned and re-scheduled for late January 2021.

As Your Honor may recall, since our last status conference with the Court, the parties engaged in mediation with the assistance of Magistrate Judge Aaron. The parties had two mediation sessions with Judge Aaron, one in June and one in October. Despite those efforts (and others outside of the sessions with the Court), the parties have been unable to resolve these cases.

As the Court may also recall, before the global pandemic and before the parties engaged in mediation efforts, Plaintiffs CVII and Hudson Bay Master Fund Ltd. ("Hudson Bay") had conducted discovery, primarily related to their remaining tortious interference claims. After CVII filed its action against Mr. Mariano, its new fraud claims were subject to a motion to dismiss. Hudson Bay was eager to complete discovery on its sole remaining tortious interference claim. CVII and Mr. Mariano agreed to proceed with discovery (coordinated with Hudson Bay) focused only on the tortious interference claims.

After the Court denied in part Mr. Mariano's motion to dismiss in late December 2019, CVII engaged in discovery on its fraud claim. It served subpoenas but was delayed in receiving documents based on assertions that both BDO (Patriot's former auditor) and the Florida Office of Insurance Regulations ("FOIR") required waivers from Patriot's trustee. CVII has

Honorable George B. Daniels  
November 24, 2020  
Page 2

now obtained documents from FOIR and other sources relating to its fraud claim. Due in large part to the pandemic and the parties' settlement efforts, CVII has not conducted depositions on its fraud claim. The fraud claim was never part of the earlier litigations and will require depositions and expert analysis before CVII will be prepared to proceed to trial.

In light of the delays and the fact that discovery on the tortious interference claims was virtually completed (other than Mr. Mariano's deposition), CVII intends to seek to sever its fraud claim and proceed to trial with its tortious interference claim in conjunction with Hudson Bay. CVII has asked for Mr. Mariano's agreement to that approach but at this time, Mr. Mariano opposes the request.

CVII therefore intends to file a motion by early December to sever its fraud claim from its tortious interference claim. CVII also intends to move to strike Mr. Mariano's jury trial demand at the same time.

CVII and Hudson Bay have requested Mr. Mariano's deposition, and the parties are in the process of arranging a date for December or early January. Once Mr. Mariano's deposition is taken, all discovery on both plaintiffs' tortious interference claims will be completed. If the Court grants the anticipated motion to sever CVII's tortious interference and fraud claims, CVII and Hudson Bay will then seek a date for trial.

CVII believes that its motions will be fully briefed and Mr. Mariano's deposition will be completed by late January. A late January or early February status conference with Your Honor will allow the parties to argue the motions and seek a trial date at that time.

Respectfully,

/s/ Laura E. Krabill

LEK/kmz

cc: William Scherer, Esquire  
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